




MEMORANDUM

TO: Mayor and Council

FROM: Howard S. Lazarus, PW, Director, Public Works Department 

DATE: September 15, 2014

SUBJECT: Response to Request for Information – Living Wage for City Construction Capital Improvement Program Projects

This memorandum is provided in response to a request for information from Council Member Martinez concerning a potential revision to the City's standard specifications that would require contractors and subcontractors working on Capital Improvement Program (CIP) projects to pay workers the City's living wage. This response addresses two concerns: the legality of this type of requirement and the potential financial impact on CIP projects.

The City's Law Department provided the following response to our request for a legal opinion on requiring the payment of a living wage:

"Chapter 2258 of the Texas Government Code requires that public works contractors pay their workers at least the prevailing wage. Section 62.0515 of the Texas Labor Code indicates that the City cannot set a minimum wage rate higher than the federal minimum wage, except on public contracts. Public contracts are generally divided into public works contracts and purchasing agreements. In this context, the distinction between public works and purchasing agreements (which would include 380 agreements) may be determinative.

"The Attorney General has pointed out that the language in the prevailing wage statute (Chapter 2258) is not only mandatory, but that there are also criminal penalties for a willful violation of the wage rate statute. TGC Section 2258.025. The AG addressed the present issue and indicated that "While Chapter 2258 does not prohibit the payment to a worker employed on a public works project greater than the general prevailing wage rate of per diem wages, it does not

authorize requiring a contractor to pay a wage rate greater than the local prevailing wage.” AG Opinion JC-0011 (1999). The AG noted that “in enacting the minimum prevailing wage requirements of Chapter 2258, the legislature intended to preclude a public body from requiring its contractor to adhere to any other minimum wage requirement.” The AG concluded that a political subdivision “may not require its outside contractors to pay their workers not less than a “living wage” in the performance of contracts subject to Chapter 2258 (public works contracts).” The AG’s office still considers this opinion a valid interpretation of the law.

“However, as of June 3, 2014, Dallas County has asked the AG’s office for an opinion on whether Section 62.0515, which was enacted after the passage of the prevailing wage act and AG Opinion JC-0011, would allow the payment of a living wage “on contracts subject to public bidding,” (which would include public works contracts), and if the promise to pay a living wage may be used as an evaluation factor in a competitive proposal process (which could also include public works contracts). It appears that the AG will have to address this present ambiguity in the law in an opinion that it should issue in the coming months.”

As requested, Public Works staff also examined the potential financial impact of requiring a living wage of \$11 per hour. The projected impacts and basis for developing these estimates are provided below:

- Contractors do not break out labor vs materials on their bids, for civil or architectural work, so we don’t have a database of information from which to pull. We therefore relied on a combination of industry standard documents (e.g. RS Means) and staff experience to determine appropriate cost breakdowns.
- The City uses two sets of wage rates for the vast majority of its CIP projects: Heavy/Highway Construction (TX16) and Building Construction (TX17). The majority of work in the CIP (~90%) falls under TX16 and is related to Austin Water Utility, Public Works, Transportation, and Watershed Protection projects. The remaining workload (~10%) consists of buildings and facility projects that fall under TX17.
- For Heavy/Highway (civil infrastructure) projects, we estimate that labor comprises approximately 60% of the construction cost. Under TX16, only three job classifications out of 50 pay below \$11/hour (Flagger @ \$9.45, Common Laborer @ \$10.50, and Roller, Other @ \$10.50). Assuming the distribution of work per the RS Means Estimating Handbook for Roadway projects, raising these jobs to the \$11/hour living wage would result in a 0.46% rise in the labor cost, or a 0.28% increase to the total project cost. With projected estimated capital spending on civil infrastructure at approximately \$590M, this would result in an annual cost increase of approximately \$1.65M. Please note that these estimates rely on assumptions

about project costs and scopes and actual cost increases would likely fall within a range of \$1.24M to \$2.06M.

- For city building projects, we believe labor comprises approximately 50% of the construction cost. Under TX17, ten job classifications (out of 29 total) pay lower than \$11/hour, including three that pay \$8/hour or less (Cement Mason/Concrete Finisher @\$10.22, Carpet Layer @ \$10.00, Reinforcing Ironworker @ \$10.00, Brick Tender @ \$8.00, Common Laborer @ \$7.57, Brush Painter @ \$10.06, Drywall Finisher @ \$9.00, Spray Painter @ \$9.70, Tile Sitter @ \$10.00, and Truck Driver (Lowboy) @ \$8.00). Assuming the distribution of work per the RS Means Estimating Handbook for Office projects, raising these jobs to the \$11/hour living wage would result in a 4.6% rise in the labor cost, or a 2.3% increase to the total project cost. With projected estimated capital spending on building projects at approximately \$320M, this would result in an annual cost increase of approximately \$7.36M. Please note that these estimates rely on assumptions about project costs and scopes and actual cost increases would likely fall within a range of \$5.52M to \$9.20M.

Another factor that should be considered in the determination of whether or not to require a living wage minimum on City CIP projects is the potential impact on other wage categories. Increasing the lowest wages to \$11 could drive increases in the higher wage categories as well. If this occurs, the cost impact may be higher. However, this upward pressure on wages would be counterbalanced by the fact that City contracts and subcontracts are competitively bid.

Please do not hesitate to contact me if you have additional questions or if I can be of further assistance:

cc: Marc A. Ott, City Manager
Robert D. Goode, Assistant City Manager
Rosie Truelove, Director, Contract Management Department
Keri Juarez, Assistant Director, Public Works Department
Gordon Bowman, Assistant City Attorney